



May 9, 2001

Ms. Margaret Turner  
Assistant City Attorney  
City of Conroe  
P.O. Box 3066  
Conroe, Texas 77305

OR2001-1893

Dear Ms. Turner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146954.

The Conroe Police Department (the "department") received a request for a copy of an incident report for September 10, 2001 involving a named individual, as well as copies of any other reports involving the individual. The submitted information includes Exhibit B, which are two incident reports concerning events which occurred on September 11, 2001. We assume that these two reports are responsive to the request for a copy of an incident report for September 10, 2001. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we address your claim that the incident reports concerning events which occurred on September 11, 2001 are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the incident reports "relate to a case that is a pending criminal prosecution." Therefore, we conclude that release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Accordingly, you may withhold these two reports pursuant to section 552.108(a)(1) of the Government Code. However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Therefore, you must release basic information in these two reports pursuant to *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing the types of basic information that must be made available to the public).

We next address the request for copies of any other incident reports involving the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common law right to privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the request for information requires the department to compile all incident reports involving the named individual. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the named individual's right to privacy to the extent that it includes incident reports where the individual is a suspect in a case. Accordingly, you must withhold from disclosure any other incident reports that reference the named individual as a suspect pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

You have also submitted to us for review incident reports in which the named individual is listed as the complainant. Because you do not claim any exception to disclosure for these reports, you must release them to the requestor. However, each of these reports contains information which is confidential by law. Section 552.130(a) excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a). Therefore, you must withhold the marked drivers' license numbers contained within these reports pursuant to section 552.130(a) of the Government Code.

The incident reports at issue also contain social security numbers which may be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* You state that these social security numbers were obtained or are maintained by the department, in part, for the purpose of obtaining criminal history information from the Department of Public Safety ("DPS"). You claim that section 411.086(b)(2) of the Government Code authorizes the DPS to adopt rules which may require a person requesting criminal history information about an individual to submit to the DPS identifying numbers of the individual, including social security numbers. However, you do not specifically state whether the department obtained or maintained the social security numbers at issue in order

to request criminal history information from the DPS. Moreover, you do not inform us as to whether the DPS actually requires or required the department to submit the social security numbers at issue in order to request criminal history information. We find that if the department obtained or maintains the social security numbers in order to request criminal history information from the DPS, and if the DPS actually requires or required the department to submit the social security numbers with its request for criminal history information, then the social security numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code on the basis of section 411.086(b)(2) of the Government Code.

In summary, you may withhold from disclosure the incident reports concerning events which occurred on September 11, 2001 pursuant to section 552.108 of the Government Code, but you must release the basic information. You must withhold from disclosure any other incident reports that reference the named individual as a suspect pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. You must release the submitted incident reports in which the named individual is listed as the complainant. However, each of the incident reports in which the named individual is the complainant contains drivers' license numbers which must be withheld from disclosure pursuant to section 552.130(a) of the Government Code. You must withhold the social security numbers in these incident reports pursuant to section 552.101 of the Government Code in conjunction with section 411.086 of the Government Code, if the department obtained or maintains the social security numbers in order to request criminal history information from the DPS, and if the DPS actually requires or required the department to submit the social security numbers with its request for criminal history information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

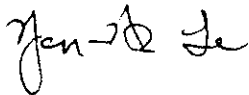
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RJB/seg

Ref: ID# 146954

Encl. Marked documents

cc: Mr. Dan A. Mobley  
314 Cochran  
Conroe, Texas 77301  
(w/o enclosures)